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8 UNITED STATES DISTRICT COURT
9 SOUTHERN DISTRICT OF CALIFORNIA
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11 UNITED STATES OF AMERICA,) 10CR4246-JM
12 Plaintiff,)
13 v.) AMENDED PROTECTIVE
14 BASAALY SAEED MOALIN, et al.,) ORDER
15 Defendant.)
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17 Upon consideration of the Government's motion for a
18 protective order concerning the dissemination of certain
19 discovery materials, and good cause appearing therefore,

20 IT IS HEREBY ORDERED pursuant to Rule 16(d) of the
21 Federal Rules of Criminal Procedure that the government
22 shall segregate the discovery materials it produces to the
23 defendants and their counsel of record into two categories:
24 (1) general discovery materials, and (2) sensitive discovery
25 materials. The government shall clearly identify any
26 sensitive discovery material;

27 IT IS FURTHER ORDERED that "sensitive discovery
28 materials"^{1/} shall not be further disseminated by the

^{1/} The category of sensitive discovery materials includes
(continued...)

1 defendants or their counsel to any individuals,
2 organizations or other entities, other than: (1) members of
3 the defense team (co-counsel, paralegals, investigators,
4 translators, litigation support personnel, the defendant,
5 and secretarial staff); and (2) experts or consultants
6 retained to assist in the preparation of the defense.
7 Notice of proposed dissemination to defense experts or
8 consultants shall be provided to the Court *ex parte* and
9 under seal and no dissemination to such experts or
10 consultants shall be made until approved by the Court. Each
11 of the individuals to whom disclosure is made pursuant to
12 the above provision shall be provided a copy of this
13 protective order and will be advised that he or she shall
14 not further disseminate the materials unless directed by
15 counsel. Counsel for defendants may not show any of such
16 sensitive discovery materials to witnesses or potential
17 witnesses unless the sensitive discovery materials consist
18 solely of that witness's statement(s) or recorded
19 conversations. A defendant may seek relief from these
20 provisions as to a particular item or items of discovery by
21 providing notice to the Court of intent to show particular
22 identified item(s) to a third party and the purpose for such
23 dissemination. The Notice shall be under seal. No
24 disclosure of the item(s) to the third parties shall be made

25 ^{1/}(...continued)

26 financial records and all declassified information or materials that
27 were a product of physical searches or electronic surveillance
28 authorized pursuant to the Foreign Intelligence Surveillance Act of
1978, 50 U.S.C. §§ 1801-1812, 1821-1829, (FISA) that are reviewed by
or made available to the defendant or defense team in this case. Such
declassified materials shall be collectively referred to as "FISA
Information."

1 until the Court so permits. The Court, after notifying the
2 defense, may consult with the Government regarding any
3 dissemination requests pursuant to this paragraph;

4 IT IS FURTHER ORDERED that all declassified FISA
5 Information that is provided as part of the sensitive
6 discovery materials in this case is now and will forever
7 remain the property of the United States Government.
8 Defense counsel will return the FISA Information, and all
9 copies thereof, to the Government at the conclusion of the
10 case. Defense counsel in receipt of FISA Information may
11 only make copies of the FISA Information in accordance with
12 this order. Defense counsel will permanently inscribe on
13 any such copies - whether hard copies or electronic media
14 - the following notation: "U.S. Government Property; May Not
15 Be Used Without U.S. Government Permission.";

16 IT IS FURTHER ORDERED that all such sensitive discovery
17 materials are to be provided to the defense, and used by the
18 defense, solely for the purpose of allowing the defendant
19 to prepare his defense and that none of the sensitive
20 discovery materials produced by the government to the
21 defense shall be disseminated to the media;

22 IT IS FURTHER ORDERED that none of the sensitive
23 discovery materials produced by the government to the
24 defense shall be disseminated to the media by the
25 government;

26 IT IS FURTHER ORDERED that any papers to be served upon
27 the Court by either party which include sensitive discovery
28 materials or refer to the contents of sensitive discovery

1 materials or any papers filed in response thereto, shall
2 be filed under seal;

3 IT IS FURTHER ORDERED that defense counsel shall store
4 all sensitive discovery materials, and any copies thereof,
5 in a secure place;

6 IT IS FURTHER ORDERED that defense counsel are
7 authorized to provide copies of the audio FISA Information,
8 and translations thereof, for review by the defendant at the
9 facility where the defendant is detained outside the
10 presence of counsel. *Defense counsel (or the government)*
11 *shall provide the copies of such information to the facility*
12 *and not to the defendant.* The defendant shall comply with
13 all protocols and procedures established by the facility for
14 accessing, reviewing and securing the copies when they are
15 not being used by the defendant. The defendant shall not
16 copy the audio FISA Information, or translations thereof,
17 or otherwise make such materials or any portion thereof
18 available to anyone not a party to this matter.

19 IT IS FURTHER ORDERED that notwithstanding any other
20 provision of this or any other Protective Order that may be
21 entered by the Court, the disclosure or discovery of
22 materials that may be submitted to the Court in connection
23 with any FISA-related litigation shall be governed by the
24 FISA;

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1 FINALLY, IT IS ORDERED that nothing in this Order shall
2 preclude the government or the defendants from seeking a
3 further protective order pursuant to Rule 16(d) as to
4 particular items of discovery material.

5 SO ORDERED.

6 DATED: February 25, 2011

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8 Hon. Jeffrey T. Miller
9 United States District Judge
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